

where the size of the farming operations is such as to justify it. Only employees engaged in the repair of equipment used in performing agricultural functions would be within section 3(f), however; employees repairing equipment used by the employer in industrial or other nonfarming activities would be outside the scope of agriculture. (*Maneja v. Waialua*, 349 U.S. 254.) The repair of equipment used by other farmers in their farming operations would not qualify as an agricultural practice incident to the farming operations of the farmer employing the repair workers.

(b) The following are other examples of practices which may qualify as “agriculture” under the secondary meaning in section 3(f), when done on a farm, whether done by a farmer or by a contractor for the farmer, so long as they do not relate to farming operations on any other farms: The operation of a cook camp for the sole purpose of feeding persons engaged exclusively in agriculture on that farm; artificial insemination of the farm animals; custom corn shelling and grinding of feed for the farmer; the packing of apples by portable packing machines which are moved from farm to farm packing only apples grown on the particular farm where the packing is being performed; the culling, catching, cooping, and loading of poultry; the threshing of wheat; the shearing of sheep; the gathering and baling of straw.

(c) It must be emphasized with respect to all practices performed on products for which exemption is claimed that they must be performed only on the products produced or raised by the particular farmer or on the particular farm (*Mitchell v. Huntsville Nurseries*, 267 F. 2d 286; *Bowie v. Gonzalez*, 117 F. 2d 11; *Mitchell v. Hunt*, 263 F. 2d 913; *NLRB v. Olaa Sugar Co.*, 242 F. 2d 714; *Farmers Reservoir Co. v. McComb*, 337 U.S. 755; *Walling v. Peacock Corp.*, 58 F. Supp. 880; *Lenroot v. Hazelhurst Mercantile Co.*, 153 F. 2d 153; *Jordan v. Stark Bros. Nurseries*, 45 F. Supp. 769).

**§ 780.159 Forest products.**

Trees grown in forests and the lumber derived therefrom are not agricultural or horticultural commodities, for

the purpose of the FLSA. (See § 780.205 regarding production of Christmas trees.) It follows that employment in the production, cultivation, growing, and harvesting of such trees or timber products is not sufficient to bring an employee within sec. 3(f) unless the operation is performed by a farmer or on a farm as an incident to or in conjunction with his or its farming operations. On the latter point, see §§ 780.200 through 780.209 discussing the question of when forestry or lumbering operations are incident to or in conjunction with farming operations so as to constitute agriculture. For a discussion of the exemption in sec. 13(b)(28) of the Act for certain forestry and logging operations in which not more than eight employees are employed, see part 788 of this chapter.

[73 FR 77238, Dec. 18, 2008. Redesignated at 74 FR 26014, May 29, 2009]

EFFECTIVE DATE NOTE: At 74 FR 26014, May 29, 2009, § 780.115 was redesignated as § 780.159 and newly designated § 780.159 was suspended, effective June 29, 2009.

**Subpart C—Agriculture as It Relates to Specific Situations**

**FORESTRY OR LUMBERING OPERATIONS**

**§ 780.200 Inclusion of forestry or lumbering operations in agriculture is limited.**

Employment in forestry or lumbering operations is expressly included in agriculture if the operations are performed “by a farmer or on a farm as an incident to or in conjunction with such farming operation.” While “agriculture” is sometimes used in a broad sense as including the science and art of cultivating forests, the language quoted in the preceding sentence is a limitation on the forestry and lumbering operations which will be considered agricultural for purposes of section 3(f). It follows that employees of an employer engaged exclusively in forestry or lumbering operations are not considered agricultural employees.

**§ 780.201 Meaning of “forestry or lumbering operations.”**

The term “forestry or lumbering operations” refers to the cultivation and management of forests, the felling and